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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,424	03/21/2001	John L. Blair	BLAIR 3-5-5-3	2399

47396 7590 05/06/2005

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EXAMINER	
CRAVER, CHARLES R	
ART UNIT	**PAPER NUMBER**
2682	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/813,424	BLAIR ET AL.	
	Examiner	Art Unit	
	Charles R Craver	2682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22 and 24-32* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-8,10-15,17-22 and 24-32* is/are rejected.

7)☒ Claim(s) *2,9 and 16* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 March 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Blakenley et al, US Pat 5,267,261, newly cited.

Claims 1, 8, 15: Blakenley discloses a controller and method for use in a data in a standard CDMA wireless communications network MS (comprising an antenna 30 and inherently a power source and filter), comprising means for sensing at least one characteristic (signal strength) associated with at least two channels of said wireless communications network and to receive system parameters (the BS sends neighbor and active list data for the MS to measure, col 3 lines 26-68, col 4 lines 15-35).

Such a standard CDMA system provides the means for the MS to measure the strengths of a number of channels in the Active and Neighbor Sets etc, and to report and update the data regarding said channels in the table based on the strength (and also the parameters as the parameters are dictated to the MS, col 20 line 61-col 22 line 14, col 22 lines 16-56), and also includes a step of handing over to a selected channel

in accordance with the measured strength and parameters (col 8 line 46-col 9 line 50). Such would provide a change in data speed if the new channel has a higher bandwidth or improved signal quality over the old one.

Claims 3, 10, 17: Blakenley discloses that said network is a wireless (reads local area) network. **Claims 4, 5, 11, 12, 18, 19:** Blakenley discloses that the system may scan and update channel information in said table periodically. **Claims 6, 13, 20:** said channels are in a RF band. **Claims 7, 14, 21:** Blakenley discloses a CDMA (DS-SS) system.

Claims 22, 24, 28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Robinson et al, US Pat 6,122,291.

Claims 22, 24 and 28: Robinson discloses a method for transmitting data across a wireless communications network having multiple channels, comprising establishing a bandwidth for transmission, determining a modulation scheme and inherent symbol rate, and selecting at least one channel to transmit, and transmitting the data using the scheme and rate (col 2 lines 3-24, col 6 line 50-col 7 line 14, col 4 lines 10-16). Robinson discloses determining a priority status and using such to determine bandwidth, and thus modulation/symbol rate (col 4 lines 24-56).

Claim 30: Robinson discloses a wireless local network.

Claim Rejections - 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Frodigh et al, US Pat 5,726,978.

Claim 25: Robinson discloses applicant's invention of claim 22, but fails to disclose comparing interference.

Frodigh discloses the utility of measuring open channel interference in a communications system in order to allocate a channel with a given bandwidth and modulation scheme (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that interference levels should be reduced in channel allocation (col 6 lines 33-44). **Claims 26 and 27:** Frodigh discloses removing channels that are below a threshold based on the channels, and thus inherently the bandwidth (col 10 lines 15-36, col 11 lines 54-67).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson as applied to claim 22 above, and further in view of Felix et al, US Pat 5,946,356.

Robinson discloses applicant's invention of claim 22, but fails to disclose using two channels or more.

Felix discloses the utility in a bandwidth-on-demand communication system to provide more than one channel depending on the needed bandwidth (abstract), which reads as multiple contiguous channels.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Robinson, as Robinson discloses that high bandwidth communications are necessary, and adding the feature of Felix would allow even more bandwidth usage than a standard channel of Robinson could provide.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blakenley as applied to claim 1 above, and further in view of Robinson.

While disclosing applicant's invention of claims 1 and 8 above, Blakenley fails to disclose priority for deciding a channel. Robinson, however, discloses a similar system wherein a priority status may be used to determine a channel and bandwidth (col 4 lines 24-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add such a feature to Blakenley as it would provide better service for more important uses such as emergency lines, as suggested by Robinson.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blakenley as applied to claim 8 above, and further in view of Robinson.

Please see the rejection of claim 31 above.

Allowable Subject Matter

Claims 2, 9 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Claims 2, 9 and 16 teach towards a controller and method in a transceiver which senses at least one characteristic associated with at least two channels in a network and receives parameters regarding said data, and updates channel information in a table associated with the channels based on the characteristics and parameters, and means to select on of the channels to modify a transmission rate, wherein said system configuration parameters are entered by a user of said wireless communications network and at least one of said system parameters is selected from the group consisting of a data rate, a symbol rate and a modulation scheme.

Claims 2, 9 and 16 recite a combination of steps or elements which are neither taught nor suggested by the prior art.

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed with regards to claims 22-30 have been fully considered but they are not persuasive.

Regarding Robinson, the examiner upholds the rejection set forth above. Note that Robinson discloses using at least one channel and establishing a bandwidth based on a priority of the data being sent. By sending the data by establishing said bandwidth,

Robinson inherently is determining that a single channel is sufficient to provide said bandwidth.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R Craver whose telephone number is 571-272-7849. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CC
May 2, 2005

5/2/05
CHARLES CRAVER
PRIMARY EXAMINER